

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

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No. 389.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

HAMBURG-AMERIKANISCHE PACKETFAHRT ACTIEN-  
GESELLSCHAFT ET AL.

Filed November 12, 1914.

File No. 24528.

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Term No. 333.

HAMBURG-AMERIKANISCHE PACKETFAHRT ACTIEN-  
GESELLSCHAFT ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA ET AL.

Filed January 25, 1915.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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VOLUME 14.

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TRANSCRIPT OF RECORD ON CROSS-APPEAL.

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REPRODUCED BY THE NATIONAL ARCHIVES SERVICE

(24446 and 24528)

IN THE  
SUPREME COURT OF THE UNITED STATES

THE UNITED STATES OF AMERICA

*Petitioner Appellee*

HAMBURG-AMERIKANISCHE PAKETFAHRT  
ACTIENGESELLSCHAFT and others

*Defendants Appellants*

and

INTERNATIONAL MERCHANT MARINE COMPANY

and others

*Defendants Appellants*

TRANSCRIPT OF RECORD ON CROSS-APPEAL

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**Order Allowing Cross-Appeal.**

1

**United States District Court,**

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,  
Petitioner,  
  
vs.  
  
HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT-ACTIEN-GESELLSCHAFT,  
*et al.*,  
  
Defendants.

In Equity  
E-7-74.

2

This day came the defendants named in the annexed petition for a cross-appeal, by their solicitors, and presented the said petition and an assignment of errors accompanying the same, and thereupon, upon consideration thereof, it is hereby

Ordered, that a cross-appeal be, and hereby is, granted and allowed, as prayed; and that the Clerk of the above-named Court be, and hereby is, directed to transmit forthwith to the Supreme Court of the United States a duly authenticated transcript of the record, papers and proceedings relating to said cross-appeal, in so far as the same are not already contained in the record heretofore transmitted to said Supreme Court on the main appeal of the United States of America herein.

3

Dated, New York, January 8, 1915.

E. HENRY LACOMBE,  
ALFRED C. COXE,  
H. G. WARD,  
*Circuit Judges.*

# **Petition for Cross-Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,  
Petitioner,

vs.

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT-ACTIEN-GESELLSCHAFT,  
*et al.*,

Defendants.

In Equity  
E-7-74.

5

*To the Honorable Judges of the United States  
District Court for the Southern District of  
New York:*

Now comes the undersigned defendants in the  
above-entitled cause, by their solicitors, and con-  
ceiving themselves aggrieved by the final decree  
made and entered by the above-named Court in  
the above-entitled cause on the 9th day of Novem-  
ber, 1914, in the manner set forth in their assign-  
ments of error filed in the said cause, to which  
reference is hereby made, do hereby pray a cross-  
appeal and do hereby so appeal therefrom to the  
present term of the Supreme Court of the United  
States.

6

And the said defendants further pray that a  
duly authenticated transcript of the record, pro-  
ceedings and papers relating to said cross-appeal,  
in so far as the same are not already contained  
in the record heretofore transmitted to said Su-  
preme Court on the main appeal of the United

States of America herein, be transmitted forthwith to the said Supreme Court of the United States.

Dated, New York, January 7, 1915.

NORDDEUTSCHER LLOYD (NORTH GERMAN  
LLOYD LINE) AND GUSTAV SCHWAB, JR.,

By Choate, Larocque & Mitchell,  
their solicitors,

40 Wall Street,  
New York City.

8

HAMBURG-AMERIKANISCHE PACKETFAHRT-  
ACTIEN-GESELLSCHAFT (HAMBURG-  
AMERICAN LINE),

CANADIAN PACIFIC RAILWAY COMPANY,  
THE ALLAN LINE STEAMSHIP COMPANY,  
LIMITED, AND BRYCE J. ALLAN,

By Spooner & Cotton, their so-  
licitors,

14 Wall Street,  
New York City.

THE CUNARD STEAMSHIP COMPANY AND  
CHARLES P. SUMNER,

9

By Lord, Day & Lord, their so-  
licitors,

49 Wall Street,  
New York City.

10      **Assignments of Error on Cross-  
Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

	UNITED STATES OF AMERICA,	} In Equity E-7-74.
	Petitioner,	
	vs.	
11	HAMBURG-AMERIKANISCHE PACK- ETFAHRT-ACTIEN-GESELLSCHAFT, <i>et al.</i> ,	
	Defendants.	

Now comes the undersigned defendants, by their respective solicitors, and file the following assignments of error upon which they will rely upon their cross-appeal from the final decree made by this Honorable Court on the 9th day of November, 1914, in the above entitled cause:

I.

12      That said Court erred in not dismissing the petition as to all the relief prayed for therein, upon the ground that the transportation carried on by the defendants between the United States and foreign countries, and the other matters alleged in the petition, are not within the purview of the Sherman Anti-Trust Act, for the reason that the Congress did not intend said Act to apply to international commerce.



II.

That said Court erred in not sustaining the defendants' demurrers to the petition upon the same ground.

Wherefore the said defendants pray that said decree may be reversed and that the District Court of the United States for the Southern District of New York be directed to enter a decree dismissing the said petition as to all the relief prayed for therein.

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NORDDEUTSCHER LLOYD (NORTH GERMAN  
LLOYD LINE) AND GUSTAV SCHWAB, JR.,

By Choate, Larocque & Mitchell,  
their solicitors,

40 Wall Street,  
New York City.

HAMBURG-AMERIKANISCHE PACKETFAHRT-  
ACTIEN-GESELLSCHAFT (HAMBURG-  
AMERICAN LINE),

CANADIAN PACIFIC RAILWAY COMPANY,  
THE ALLAN LINE STEAMSHIP COMPANY,  
LIMITED, AND BRYCE J. ALLAN,

15

By Spooner & Cotton, their so-  
licitors,

14 Wall Street,  
New York City.

THE CUNARD STEAMSHIP COMPANY AND  
CHARLES P. SUMNER,

By Lord, Day & Lord, their so-  
licitors,

49 Wall Street,  
New York City.

**Citation on Cross-Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

	UNITED STATES OF AMERICA,	} In Equity E-7-74.
	Petitioner,	
	vs.	
17	HAMBURG-AMERIKANISCHE PACK- ETFAHRT-ACTIEN-GESELLSCHAFT, <i>et al.</i> ,	} Defendants.

*By the Hon. E. Henry Lacombe, one of the Circuit Judges sitting in the District Court of the United States for the Southern District of New York in the Second Circuit.*

18 To the United States of America, International Mercantile Marine Company (American Line), International Navigation Company, Limited (American Line), The Anchor Line (Henderson Brothers), Limited, British and North Atlantic Steam Navigation Company, Limited (Dominion Line), Nederlandish-Amerikaansche Stoomvaart Maatschappij (Holland Amerika Lijn), Societe Anonyme de Navigation Belge Americaine (Red Star Line), Ocean Steam Navigation Company, Limited (White Star Line), Russian East Asiatic Steamship Company, Limited (Russian-American Line), Phillip A. S. Franklin, John Lee, William Coverly, Adrian Gips, Alexander E. Johnson and Max Straus.

GREETING:

You are hereby cited and admonished to be and appear before a Supreme Court of the United States to be holden at the City of Washington in the District of Columbia on the 20th day of January, 1915, pursuant to a cross-appeal filed in the Clerk's office of the District Court of the United States for the Southern District of New York from a judgment and decree made on or about the 9th day of November, 1914, in a certain proceeding wherein you are the petitioner and the Hamburg-Amerikanische Packetfahrt-Actien-Gesellschaft, *et al.*, are defendants, and wherein the Hamburg-Amerikanische Packetfahrt-Actien-Gesellschaft, Norddeutscher Lloyd, The Cunard Steamship Company, Canadian-Pacific Railway Company, The Allan Line Steamship Company, Limited, Gustav Schwab, Jr., Bryce J. Allan and Charles P. Sumner are cross-appellants, and you are respondents, to show cause, if any there be, why the judgment and decree in said cross-appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

20

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above-named, this 8th day of January, in the year of our Lord one thousand nine hundred and fifteen and of the independence of the United States the one hundred and thirty-ninth.

21

E. HENRY LACOMBE,  
*Circuit Judge sitting in the District  
Court of the United States for the  
Southern District of New York in  
the Second Circuit.*

**Praeceptum on Cross-Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,

Petitioner,

vs.

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT-ACTIEN-GESELLSCHAFT,  
*et al.*,

Defendants.

In Equity

E-7-74.

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*Alexander Gilchrist, Jr., Clerk U. S. District  
Court, Southern District of New York:*

You will please take notice that the portion of  
the record to be incorporated in the transcript  
on the cross-appeal of the defendants, represented  
by the undersigned solicitors, is as follows:

24

1. The order made and entered in the above-  
entitled cause on the 5th day of January,  
1912, overruling the defendants' demurrers  
to the petition;

the other papers relating to said cross-appeal,  
viz., the demurrers, opinion overruling demurrers  
and final decree, being already contained in the  
duly authenticated transcript of the record, papers  
and proceedings, heretofore transmitted by you to

the Supreme Court of the United States on the main appeal of the petitioner herein.

Dated, N. Y., January 12, 1915.

CHOATE, LAROCQUE & MITCHELL,  
*Solicitors for the Defendants Nord-  
deutscher Lloyd and Gustav  
Schwab, Jr.,*

40 Wall Street,  
New York City.

26

SPOONER & COTTON,  
*Solicitors for Defendants Hamburg-  
Amerikanische Packetfahrt Actien-  
Gesellschaft, Canadian Pacific  
Railway Company, The Allan Line  
Steamship Company, and Bryce J.  
Allan,*

14 Wall Street,  
New York City.

LORD, DAY & LORD,  
*Solicitors for Defendants The Cunard  
Steamship Company and Charles  
P. Sumner.*

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**Stipulation.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA.

Petitioner,

vs.

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT-ACTIEN-GESELLSCHAFT,  
*et al.*,

Defendants.

In Equity  
E-7-74.

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The parties hereto, hereby stipulate and agree that the portion of the record as set forth in the foregoing praecipe of the defendants in the above-entitled case may be incorporated in their said record on cross-appeal to the Supreme Court of the United States.

Dated, New York, January 9th, 1914.

H. SNOWDEN MARSHALL,

U. S. Attorney,

*Solicitor for Petitioner.*

30

CHOATE, LAROCQUE &amp; MITCHELL.

*Solicitors for Defendants Nord-  
deutscher Lloyd and Gustav  
Schwab, Jr.*

SPOONER &amp; COTTON,

*Solicitors for Defendants Hamburg-  
Amerikanische Packetfahrt Actien*

*Gesellschaft, Canadian Pacific Railway Company, The Allan Line Steamship Company, Limited, and Bryce J. Allan.*

LORD, DAY & LORD,  
*Solicitors for Defendants The Cunard Steamship Company, Limited, and Charles P. Sumner.*

BURLINGHAM, MONTGOMERY & BEECHER,  
*Solicitors for Defendants International Mercantile Co., International Navigation Co., Ltd., The Anchor Line (Henderson Bros.), Ltd., British & North Atlantic Steam Navigation Co., Ltd., Holland-American Line, Societe Anonyme de Navigation Belge Americaine, Ocean Steam Navigation Co., Ltd., Phillip A. S. Franklin, William Coverly, and Adrian Gips.* 32

RALPH JAMES M. BULLOWA,  
*Solicitor for Defendant Russian East Asiatic Co., Alexander E. Johnson and Max Straus.* 33

## Order Overruling Demurrers to Petition.

At a Stated Term of the United States District Court for the Southern District of New York, held at the United States Court and Post Office Building, in the Borough of Manhattan, City of New York, on the 5th day of January, 1912.

Present—HON. E. HENRY LACOMBE,  
HON. ALFRED C. COXE,  
HON. HENRY G. WARD,  
HON. WALTER C. NOYES,

*Circuit Judges.*

THE UNITED STATES OF AMERICA,  
Petitioner,

vs.

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT ACTIEN-GESELLSCHAFT,  
and others,

Defendants.

Demurrers having been heretofore filed to the petition herein by defendants, The Allan Line Steamship Company, Limited, International Mercantile Marine Company, International Navigation Company, Limited, The Anchor Line (Henderson Brothers), Limited, Canadian Pacific Railway Company, the Cunard Steamship Company, Limited, British and North Atlantic Steam Navigation Company, Limited, Hamburg-Amerikan-



ische Packetfahrt Actien-Gesellschaft, Nederlandsh-Amerikaansche Stoomvaart Maatschappij (Holland Amerika Lijn), Norddeutscher Lloyd, Societe Anonyme de Navigation Belge Americaine, Russian East Asiatic Steamship Company, Limited, Oceanic Steam Navigation Company, Limited, Bryce J. Allan, Phillip A. S. Franklin, William Coverley, Charles P. Sumner, Emil L. Boas, Adrian Gips, Gustav H. Schwab, Herman G. Van Post, Gustav H. Schwab, Jr., Alexander E. Johnson and Max Strauss, and a certificate having been filed herein on the 31st day of October, 1911, by the Attorney General of the United States, praying that this case be expedited, and the Court having ordered that the argument of these demurrers be heard before all of the Circuit Judges for the Second Circuit, and said demurrers having, in accordance therewith, duly come on to be heard before us on the 11th and 12th days of December, 1911, and after hearing William G. Choate, Esq., counsel for Norddeutscher Lloyd and others, Charles C. Burlingham and William S. Montgomery, counsel for International Mercantile Marine Company and others, Lucius H. Beers, Esq., counsel for Cunard Steamship Company, Limited, and others, John C. Spooner, Esq., counsel for Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft, and Messrs A. L. & S. F. Jacobs, solicitors for the Russian East Asiatic Steamship Company, Limited, and others, all in support of said demurrers, and Henry A. Wise, United States Attorney, in opposition thereto, and due consideration thereon having been had,

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39

Now, upon motion of Henry A. Wise, United States Attorney, solicitor for the petitioner, it is  
Ordered, that the said demurrers be, and they

*Order Overruling Demurrers to Petition.*

are hereby overruled, with costs to be taxed, with leave to the aforesaid defendants to answer the said petition on or before the first Monday of March, 1912.

E. HENRY LACOMBE,  
*Circuit Judge.*

ALFRED C. COXE,  
*Circuit Judge.*

H. G. WARD,  
*Circuit Judge.*

WALTER C. NOYES,  
*Circuit Judge.*

**Stipulation.**

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UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK.

THE UNITED STATES OF AMERICA,  
Petitioner,

vs.

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT-ACTIEN-GESELLSCHAFT,  
and others,

Defendants.

In Equity  
E-7-74.

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It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, January 15, 1915.

H. SNOWDEN MARSHALL,  
U. S. Attorney,  
*Solicitor for Petitioner.*

45

CHOATE, LAROCQUE & MITCHELL,  
*Solicitors for Defendants Nord-  
deutscher Lloyd and Gustav  
Schwab, Jr.*

SPOONER & COTTON,  
*Solicitors for Defendants Hamburg-  
Amerikanische Packetfahrt Actien*

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*Stipulation.*

*Gesellschaft, Canadian Pacific Railway Company, The Allan Line Steamship Company, Limited, and Bryce J. Allan.*

LORD, DAY & LORD,  
*Solicitors for Defendants The Cunard Steamship Company, Limited, and Charles P. Sumner.*

47

BURLINGHAM, MONTGOMERY & BEECHER,  
*Solicitors for Defendants International Mercantile Co., International Navigation Co., Ltd., The Anchor Line (Henderson Bros.), Ltd., British & North Atlantic Steam Navigation Co., Ltd., Holland-American Line, Societe Anonyme de Navigation Belge Americaine, Ocean Steam Navigation Co., Ltd., Phillip A. S. Franklin, William Coverly, and Adrian Gips.*

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RALPH JAMES M. BULLOWA,  
*Solicitor for Defendant Russian East Asiatic Co., Alexander E. Johnson and Max Straus.*

**Clerk's Certificate.**

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UNITED STATES OF AMERICA,  
Southern District of New York, } ss. :

THE UNITED STATES OF AMERICA,  
Petitioner,

vs.

HAMBURG-AMERIKANISCHE PACK-  
ETFAHRT ACTIEN-GESELLSCHAFT,  
and others,

Defendants.

50

I. ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 18th day of January, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the said United States 51  
the one hundred and thirty-ninth.

(Seal.)

ALEX. GILCHRIST, JR.,

Clerk.